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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,072	01/21/2005	Charles Jelinek Francis	CJEL102	7588

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EXAMINER

KAVANAUGH, JOHN T

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 06/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/522,072

Applicant(s)

FRANCIS, CHARLES JELINEK

Examiner

Ted Kavanaugh

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7-6-05&7-13-05</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Objections

1. Claims 1-16 are objected to because of the following informalities: The following terms throughout lack proper antecedent basis “the underside of the ski boots” (throughout the claims), “the underside of the footbed” (throughout the claims), “the walking motion” (throughout the claims), “said arch’s apex” (claim 10), “the front or rear edge of the sole” (claim 12), “the topside” (claim 13), “the foot portion” (claim 14), “the toe and heel of the sole” (claim 15), and “the length” (claim 15). Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1,2 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4619059 (Koniuk).

Koniuk teaches an apparatus as claimed including a footbed (see figures 5-8) and attachment means (24).

4. Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4843672 (Fasse).

Fasse teaches an apparatus as claimed including a footbed (12) , attachment means (5,7) and a lengthwise stiffening member (outer skin 11). The outerskin is stiffer (more rigid) than the footbed.

5. Claims 15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5481814 (Spencer).

Spencer teaches an apparatus having structure as claimed including a footbed separated in front and rear section (see figure 3a), connection means (20) and an elastomeric tread (32)

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3,4, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koniuk in view of US 4461104 (Calkin et al).

Koniuk teaches an apparatus substantially as claimed except for an elastomeric tread pads connected to the underside of the footbed. Calking teaches an elastomeric tread pad (26,28) on the underside of the footbed. It would have been obvious to provide the footbed of Koniuk with an elastomeric tread pads on the underside, as taught by Calkin, to provide more traction.

8. Claims 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koniuk in view of US 4461104 (Calkin et al).

Koniuk teaches an apparatus substantially as claimed including a footbed (underside 22 of outerskin 30) and a pad (32) made out of resilient elastomeric material except for an elastomeric tread pads connected to the underside of the footbed.

Calking teaches an elastomeric tread pad (26,28) on the underside of the footbed. It would have been obvious to provide the footbed of Koniuk with an elastomeric tread pads on the underside, as taught by Calkin, to provide more traction.

9. Claims 7,8,10 and 12 rejected under 35 U.S.C. 103(a) as being unpatentable over US 4570363 (Annovi) in view of US 4461104 (Calkin et al).

Annovi teaches an apparatus substantially as claimed including a footbed (9) having a molded arch (reference numeral 9 is pointing to the arch in figure 2), a clip (12,14), and a lip (11) except for elastomeric tread pads connected to the underside of the footbed. Calking teaches an elastomeric tread pad (26,28) on the underside of the footbed. It would have been obvious to provide the footbed of Annovi with an elastomeric tread pads on the underside, as taught by Calkin, to provide more traction.

10. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koniuk in view of Calkin '104 and US 5154682 (Kellerman).

Koniuk teaches an apparatus substantially as claimed except for an elastomeric tread pads connected to the underside of the footbed and a slippery coating on the top side of said footbed. Calking teaches an elastomeric tread pad (26,28) on the underside of the footbed. It would have been obvious to provide the footbed of Koniuk with an elastomeric tread pads on the underside, as taught by Calkin, to provide more traction. Kellerman teaches the top side of an attachment with a slippery coating (see col. 5,

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lines 45-49). It would have been obvious to provide the apparatus as taught above with the top side having a slippery coating, as taught by Kellerman to prevent discomfort to the wearer's foot.

Allowable Subject Matter

11. Claim 11 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and overcoming the objections applied above.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

13. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including:

-“The reply must present arguments pointing out the *specific* distinctions believed to render the claims, including any newly presented claims, patentable over any applied references.”

--“A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section.”

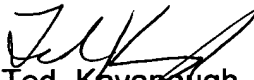
-Moreover, “The prompt development of a clear issue requires that the replies of the applicant meet the objections to and rejections of the claims. Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06” MPEP 714.02. The “disclosure” includes the claims, the specification and the drawings.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at www.uspto.gov.

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (571) 273-8300 **(FORMAL FAXES ONLY)**. Please identify Examiner Ted Kavanaugh of Art Unit 3728 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Ted Kavanaugh whose telephone number is (571) 272-4556. The examiner can normally be reached from 6AM - 4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562.


Ted Kavanaugh
Primary Examiner
Art Unit 3728

TK
June 16, 2006